IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A. No. 1888 of 2006 (O&M)
Date of Decision : 18.10.2007

Surajmal & Anr.

..... Appellants

Versus

State of Haryana & Anr.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Mahavir Sandhu, Advocate
for the appellants.

Mr. Amit Kaushik, AAG, Haryana
for the respondents.

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VINOD K. SHARMA, J. (ORAL)

This regular second appeal has been filed against the judgment and decree passed by the learned lower appellate Court vide which suit filed by the plaintiff appellant has been ordered to be dismissed.

The plaintiff filed suit for declaration against the show cause noitice issued to him in terms of Section 53 of the Haryana Panchayati Raj Act, 1994 calling upon him to show cause as to why recovery be not effected from him for the loss caused to the Panchayat Fund.

Instead of filing reply to the show cause notice, the plaintiff chose to file the suit in the civil Court. The learned trial Court on issue No.1 came to the conclusion that the defendant had right only to recover and issue notice to plaintiffs for refunding only the difference i.e. Rs. 74,116/-(Rupees seventy four thousand one hundred and sixteen only) minus Rs. 67,621/-(Rupees sixty seven thousand six hundred and twenty one only) therefore, partly decided issue No.1 in favour of the plaintiffs.

The learned trial Court on issue No.2 held that the suit was maintainable. Issues No. 3 & 4 were decided in favour of the plaintiffs as no arguments were addressed by the learned counsel for the respondents.

The suit was decreed by observing that the defendants should refund the amount of difference of the due amount and amount already paid by the plaintiffs.

In appeal, the judgment and decree passed by the learned trial Court has been set aside by observing that the order passed under Section 53 of the Act is appealable but no appeal was filed. It was further observed that the remedy for approaching the State Government under Section 53(4) of the Act was also available to the plaintiffs and,therefore, the learned lower appellate Court came to the conclusion that the notice issued under the Act could not be declared null and void in absence of any illegality being pointed out in the notice. It was also held that the learned civil Court cannot sit over the proceedings of the Panchayat without any illegality being pointed out in the procedure. Thus, the appeal was accepted and the suit was ordered to be dismissed.

The learned counsel for the appellants contends that the learned lower appellate Court was not justified in allowing the appeal as the plaintiffs had challenged the notice issued to them as no appeal is provided against show cause notice as it is only the order which is finally passed is appealable.

The learned counsel for the appellants also argued that the suit was competent as the report of the Junior Engineer was in favour of the plaintiff appellants and, therefore, the B.D.P.O. was not justified in issuing the notice for recovery.

The contention raised by the learned counsel for the appellant prima facie cannot be accepted as the authority to pass an order of recovery vests with the BDPO under the Act and it is settled law that before any action is taken the principle of natural justice should be followed. It was in order to comply with the principle of natural justice that a notice was issued to the plaintiffs to show cause as to why the recovery be not made. The learned lower appellate Court, therefore, was justified in coming to the conclusion that the learned trial Court has no jurisdiction to sit over the matter and adjudicate on merit as to whether any recovery was due and payable by the plaintiff or not. It was for the BDPO to pass an order on consideration of the reply,if any, submitted by the plaintiff respondents, whether any recover was due. The learned lower appellate Court, therefore, was right in coming to the conclusion that the learned trial Court was not having jurisdiction, in the facts and circumstances of the present case, to entertain and try the suit and pass the decree.

The plea of the learned counsel for the appellants that the civil Court had the jurisdiction to entertain and try the suit because of the reports submitted in his favour, is also misconceived as this plea is to be considered by the statutory authorities under the Act and the Civil Court would have no power to interfere in exercise of the power by BDPO to adjudicate the matter.

Therefore, the order passed by the learned lower appellate Court is in consonance with law and question of law sought to be raised raised by the learned counsel for the appellant does not arise in this appeal.

No substantial question of law arises for consideration in this appeal.

Dismissed.

18.10.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**